



The conclusions reached in sections B through D were agreed upon by the Commission at its September 27th meeting, and thus the only changes made to these sections were the written edits submitted by Commissioner Knight, and the other edits provided by Commissioners during the meeting. Per discussion at the meeting, the conclusion reached in section A which stated that state officials could not serve on solicitation committees and could not choose businesses for solicitation has been deleted – state officials are simply prohibited from performing the actual solicitation of employers of lobbyists and lobbyists. Otherwise, the general conclusion reached in section A has not been changed from the previous draft, but the section has been re-written based upon the discussion at the meeting (and additional information has been added to the “Background”). Finally, Commissioner Knight’s additional conclusion for section B has been highlighted for discussion purposes.

ADVISORY OPINION 07-08

Interpretation of T.C.A. § 3-6-305,
with respect to whether state officials,
when serving as a member of a government
official professional association, may solicit
contributions from employers of lobbyists.

INTRODUCTION:

The following Advisory Opinion is in response to a written inquiry from Mr. Gerry Boaz, on behalf of the Association of Government Accountants (“AGA”), as to whether the Comprehensive Governmental Ethics Reform Act of 2006 (the “Act”) prohibits state officials, when serving in their capacity as members of AGA, from soliciting contributions from local businesses which may be employers of lobbyists.

Mr. Boaz poses the following questions:

(1) Does the Act permit state officials to solicit contributions from local businesses to sponsor an AGA event for the benefit of all AGA members attending the event? Can state officials solicit contributions on behalf of the AGA, or must such solicitations be performed by its private sector members? Are state officials permitted to serve as board members of the AGA and in such capacity solicit contributions on behalf of the AGA? What types of fundraising activities are appropriate? If a state official solicits contributions, can the state official participate in an AGA sponsored event?

(2) Does the Act permit a corporate sponsorship committee, which includes state officials, to solicit businesses if the contribution/donation is for the purpose of purchasing a good or service from the AGA, such as the right to advertise on the AGA’s website or in its newsletter or brochures?

(3) Are state officials permitted to use their state e-mail accounts when acting as AGA committee members and engaging in AGA fundraising?

(4) Does the Act place limits upon the value of items that might be included in conference “goodie bags,” or items that might be donated for sale in a silent auction?

ANSWERS:

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

(1) The AGA may establish a corporate sponsorship committee to solicit contributions from local businesses. However, state officials, on behalf of AGA, may not solicit employers of lobbyists.¹

(2) An AGA corporate sponsorship committee may solicit local businesses, including employers of lobbyists, to purchase a good or service from AGA for the fair market value of the good or service, and state officials may serve on such a committee.

(3) Questions regarding the allowable use of state e-mail accounts are not within the jurisdiction of the Commission and should be referred to the state employee’s appointing authority.

(4) Gifts provided by employers of lobbyists to state officials are prohibited, regardless of value, unless the item being donated for the “goodie bag” or silent auction falls within one of the exceptions listed in T.C.A. § 3-6-305(b).

BACKGROUND

AGA is a national professional organization which promotes government accountability. Its membership is comprised of government accountability professionals such as auditors, accountants, budget analysts, chief financial officers, information systems managers, finance directors, inspectors general, professors and students. Tennessee officials have received permission from their respective agencies to serve as Chapter Executive Committee members.

Most AGA chapters have fundraising activities. In 2006, the AGA solicited funds from private businesses to be corporate sponsors for the Southeastern Professional Development Conference, a regional event. In addition, the AGA may solicit businesses which conduct business, or which have in the past conducted business, with the Comptroller’s Office. AGA wants to start a corporate sponsorship committee to solicit contributions from local businesses to benefit all members of AGA. The AGA plans to host a conference in 2008. As a part of conference participation, attendees will be given a conference “goodie bag.” AGA would also like to conduct a silent auction.

DISCUSSION:

A. SOLICITATION OF CORPORATE SPONSORSHIPS BY STATE OFFICIALS

Does the Act permit state officials to solicit contributions from local businesses to sponsor an AGA event for the benefit of all AGA members attending the event? Can state officials solicit contributions on behalf of the AGA, or must such solicitations be performed by its private sector

¹The restrictions on solicitations of employers of lobbyists would equally apply to solicitations of lobbyists.

members? Are state officials permitted to serve as board members of the AGA and in such capacity solicit contributions on behalf of the AGA? What types of fund raising activities are appropriate? If a state official solicits contributions, can the state official participate in an AGA sponsored event?

T.C.A. § 3-6-305(a)(2) states:

A candidate for public office, an official in the legislative branch, or an official in the executive branch, or the immediate family of such candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, unless an exception applies.²

According to the facts provided, members of the AGA want to solicit contributions from local businesses to sponsor its events. The Act prohibits state officials from directly or indirectly soliciting gifts from businesses which are employers of lobbyists. However, state officials are permitted to solicit sponsorships from businesses that are not employers of lobbyists.

State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending on the organization or association. An organization such as the AGA, however, is an established and recognized professional organization for government employees that promotes government accountability. In addition, most, if not all, of the state officials who are members of AGA receive their membership as a part of their employment, and their activities are supported by their employing agencies as a part of their job duties. Accordingly, when acting as a representative of AGA, members who are state officials are not performing an activity outside of their job, and it is difficult, if not impossible, for the state official, acting on behalf of AGA, to be seen as performing a role separate from his or her status as a state employee when soliciting contributions from employers of lobbyists. Therefore, those members of AGA who are state officials may serve as board members and may solicit any business that is not registered as an employer of a lobbyist.

B. SALES OF AGA SERVICES TO CORPORATE SPONSORS

Does the Act permit a corporate sponsorship committee, which includes state officials, to solicit businesses if the contribution/donation is for the purpose of purchasing a good or service from the AGA, such as the right to advertise on the AGA's website or in its newsletter or brochures?

There is no restriction on the AGA offering to sell goods or services to local businesses for value. If the AGA sells goods or services for fair market value, the payment received from the local business is not a "gift" under T.C.A. § 3-6-301(11), and the gift restrictions of T.C.A. § 3-6-305 do not apply.

Therefore, a government official who serves on the corporate sponsorship committee may contact businesses in order to sell AGA goods or services for fair market value.

²For a complete list of exceptions, see T.C.A. § 3-6-301(11) and § 3-6-305(b). It does not appear that any exception applies under the facts provided in this question.

If the advertisement or other goods or services are provided in partial consideration for a donation, contribution or sponsorship, the fair market value of the goods or services would be set off against the amount of the contribution/donation/sponsorship to reduce the net amount of the contribution/donation/sponsorship.

I am unclear regarding the intent of this paragraph as it applies to the specific question of whether a state employee may contact businesses to sell AGA goods or services. I understand this conclusion in the context of determining reporting requirements, or in the context of determining what portion of a "contribution" a state official may or may not be able to accept – but in the context of this solicitation question, is your conclusion that state officials may contact businesses who would provide a contribution or donation that would partially be a good or service for FMV, and would partially be a gift for the purposes of the Act?

C. USE OF STATE E-MAIL BY STATE OFFICIALS

Does the Act permit state officials to use their state e-mail accounts when acting as AGA committee members and engaging in fundraising for the AGA?

Questions regarding the allowable use of state e-mail accounts are not within the jurisdiction of the Commission and should be referred to the state employee's appointing authority.

D. VALUE LIMITS ON CONTRIBUTIONS OF TANGIBLE ITEMS

Are there limits upon the value of items that might be included in conference "goodie bags", or items that might be donated for sale in a silent auction?

A state official may not receive any item from an employer of a lobbyist or a lobbyist that is considered a gift for the purposes of T.C.A. § 3-6-305(a)(2), regardless of its value, unless it is within an exception to the general prohibition. Thus, although an item may be considered inexpensive, state employees may not solicit or accept the item from an employer of a lobbyist or a lobbyist unless it falls within one of the gift ban exceptions contained in T.C.A. § 3-6-305(b).

Many of the items commonly found in "goodie bags" will fall within one of the exceptions contained in this subsection. For example, T.C.A. § 3-6-305(b)(2) provides an exception for informational materials in the form of books, audiotapes, etc. T.C.A. § 3-6-305(b)(4) contains an exception for sample materials, promotional items and appreciation tokens that are routinely given to customers, suppliers, or potential customers in the ordinary course of business. In addition, T.C.A. § 3-6-305(b)(6)(A) provides an exception for discounts that are provided to the general public or specified groups or occupations in the ordinary course of business.

Accordingly, each item proposed for donation should be analyzed to determine whether it falls within one of the exceptions contained in T.C.A. § 3-6-305(b). If included within one of the exceptions, the item can be included in a "goodie bag," and there is no specific limit on the value of such items.

Donations to a silent auction are made to the organization, not to the state official per se. Thus, they are not prohibited. Further, anyone attending the event is allowed to bid on the auction items, and

TENNESSEE ETHICS COMMISSION
ADVISORY OPINION 07-08
NOVEMBER 8, 2007
Page 5 of 5

the highest bidder is the purchaser of the item. This privilege is equally open to those who are state officials and those who are not.

Donald J. Hall, Chair
R. Larry Brown
Thomas J. Garland
Linda Whitlow Knight, Esq.
Dianne Ferrell Neal
Benjamin S. Purser, Jr.,
Commissioners

Date: November 8, 2007